

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
General Growth Properties)	File No. EB-06-SE-330
Waterbury, Connecticut)	NAL/Acct. No. 200732100021
)	FRN # 0005261128

FORFEITURE ORDER

Adopted: August 22, 2007

Released: August 24, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand, four hundred dollars (\$8,400) against General Growth Properties (“GGP”)¹ for willful and repeated violations of Section 301 of the Communications Act of 1934 (“*Act*”), as amended,² and Sections 1.903(a) and 1.949(a) of the Commission's Rules (“*Rules*”).³ The noted violations involve operating a Private Land Mobile Radio Service (“PLMRS”) station without Commission authority, failing to file a timely renewal application for the station and failing to respond to directives of the Spectrum Enforcement Division (“*Division*”), Enforcement Bureau (“*Bureau*”) to provide certain information and documents.

II. BACKGROUND

2. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires licensees to file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.” Absent a timely filed renewal application, a wireless radio station license automatically terminates on the specified expiration date.⁴

¹ GGP, a real estate investment trust, is the second largest owner/operator of shopping malls in the US (over 220). See Hoover's, Inc. (Feb. 13, 2007). GGP's net income in 2006 was over \$63.8M. See Market Guide Company Profiles, Multex.com, Inc. (2006).

² 47 U.S.C. § 301.

³ 47 C.F.R. §§ 1.903(a) and 1.949(a).

⁴ 47 C.F.R. § 1.955(a)(1).

3. On April 2, 2007, the Division released a *Notice of Apparent Liability for Forfeiture* (“NAL”)⁵ finding that GGP willfully and repeatedly operated PLMRS station WPPT427 without Commission authority after its authorization expired on April 3, 2005, failed to file a timely renewal application for the station by the date of expiration, and failed to respond to directives of the Division to provide the information and documents requested in two letters of inquiry dated September 27, 2006 and December 14, 2006. The *NAL* proposed a forfeiture in the amount of ten thousand, five hundred dollars (\$10,500) based on GGP’s apparent willful and repeated violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.⁶ The *NAL* also downwardly adjusted that amount to nine thousand, two hundred dollars (\$9,200)⁷ based on corrective action taken by GGP before the Commission initiated any inquiry or enforcement action, by voluntarily disclosing to Commission staff in its April 17, 2006 request for Special Temporary Authority,⁸ that it had failed to file a timely renewal application for the PLMRS station and had operated without Commission authorization.⁹

4. On April 20, 2007, GGP filed a response to the *NAL* (“Response”).¹⁰ In its Response, GGP conceded that it violated the rules and sought a reduction or abatement of the forfeiture amount based on its efforts to initiate a national review of its PLMRS station licensing procedures and to address internal communications and reporting issues that resulted in its failure to respond to the Division’s directives. In addition, GGP asserted that the failure to file a timely renewal application by its Brass Mill Center in Waterbury, Connecticut, was an isolated and inadvertent incident and that it has an otherwise broad history of overall compliance with the rules.¹¹

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹² Section 1.80 of the Rules,¹³ and the Commission’s *Forfeiture Policy Statement*.¹⁴ In

⁵ *General Growth Properties*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 6562 (Enf. Bur., Spectrum Enf. Div. 2006) (“NAL”).

⁶ *Id.* at 6565.

⁷ *Id.*

⁸ *Id.* at 6562, 6565.

⁹ *Id.* at 6565 n.25 citing *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004) (forfeiture reduced for voluntarily disclosure and initiating corrective action prior to Commission inspection); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div. 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3926 (Enf. Bur., Spectrum Enf. Div. 2006); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div. 2005); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div. 2005).

¹⁰ See Letter from Ryan B. Whitacre, Esq., Assistant General Counsel, General Growth Properties, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 20, 2007) (“Response”).

¹¹ Response at 1-2.

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80.

assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁵

6. We have considered GGP's Response in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We conclude that GGP willfully and repeatedly violated Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules. We also find that GGP's history of overall compliance warrants a further reduction of the proposed forfeiture amount to \$8,400. GGP asserts, and a search of Commission records confirms that the company has an overall history of compliance with the rules.¹⁶ Accordingly, we downwardly adjust the aggregate forfeiture amount from \$9,200 to \$8,400.

7. We find no other mitigating circumstances warranting further reduction of the proposed forfeiture amount. GGP, in its response to our *NAL*, admits to committing the acts leading to the violations, but asserts that such acts were isolated and inadvertent.¹⁷ The Commission has held that an unintended error does not nullify or mitigate violations of the Act or the rules.¹⁸ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Rather, the term "willful" simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.¹⁹ Further, GGP asserts that as soon as it received the *NAL*, it took steps to comply with the rules. GGP explains that it revised its PLMRS station licensing procedures to ensure that renewal applications are timely filed.²⁰ GGP also states that it corrected the internal communications problem that resulted in its failure to respond to the Division's letters of inquiry.²¹ Although GGP's corrective measures

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¹⁴ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ Response at 2.

¹⁷ *Id.* at 1.

¹⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("stating that inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") ("*Southern California*").

¹⁹ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4388.

²⁰ Response at 2.

²¹ *Id.*

are commendable, it is well-settled that subsequent remedial actions undertaken by a licensee neither excuse nor nullify a licensee's rule violation.²²

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²³, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,²⁴ GGP, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand, four hundred dollars (\$8,400) for willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules, and for willful and repeated failure to respond to Bureau directives.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.²⁶

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Ryan B. Whitacre, Esq., Assistant General Counsel, General Growth Properties, Inc., 110 N. Wacker Drive, Chicago, IL 60606.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²² See *Padre Serra Communications, Inc.*, Letter Decision, 14 FCC Rcd 9709, 9714 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 2d 706 (1962)).

²³ 47 U.S.C. § 503(b).

²⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²⁵ 47 U.S.C. § 504(a).

²⁶ See 47 C.F.R. § 1.1914.